

OFFICE OF PERSONNEL MANAGEMENT
Interagency Advisory Group
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Washington, D.C. 20415

PC

Minutes of the IAG Adverse Action Committee
December 22, 1978

Wilma Lehman of the Policy Analysis and Development Division chaired the special meeting, assisted by Jean Barber of PADD, Elsie Fischer of the Bureau of Training, presenting on detail to PADD, and Seymour Alloy of the Department of Air Force.

Office of Personnel Management intervention in MSPB appeals cases

Mrs. Barber pointed out that the pending reorganization would bring about a new relationship between OPM, the office responsible for policy -- OPM -- and MSPB, the new appellate body.

The law requires certain relationships:

- MSPB must notify OPM when laws, rules, and regulations administered by OPM are at issue in a case, with the Board deciding when they are at issue.
- OPM may intervene in a case when in the Director's opinion "an erroneous decision would have a substantial impact on any civil service law, rule, or regulation under the jurisdiction of the Office."
- A member of the Board may request an advisory interpretation by OPM.
- After MSPB's decision is issued on an appeal, the Director of OPM may request the Board to reopen and reconsider the decision.
- The Director may request judicial review, but only after requesting reopening and reconsideration of a decision.
- OPM is to receive copies of all MSPB decisions.

Because of two factors -- time and volume -- involved in making and reviewing decisions, OPM will be heavily dependent on cooperation by interested agencies in deciding whether to intervene in a particular case or request reopening. By law, MSPB must process cases very quickly and cannot give OPM much time to intervene. Mrs. Barber's understanding is that MSPB regulations probably will allow OPM

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seven days to decide whether to intervene, and 15 days to submit a formal statement on the policy matter at issue. With this short time available, OPM needs to hear from agencies when a case of interest to the agency and to OPM is coming up in order for OPM to have more than 15 days to deal with these situations.

The second factor -- volume -- will strain OPM's resources. Approximately 5000 appeals were decided this year. Agencies will of course be checking those decisions in cases where they are a party. OPM will have very few people to review decisions and must count on the agencies again to tell it of cases where agencies think OPM should ask for reopening and reconsideration.

Mrs. Barber expects the intervention will be handled in the central office of OPM, not delegated to the field. She stated that OPM would only intervene in cases with substantial impact, not in routine cases.

She next pointed out some of the questions that would have to be answered about the new function:

- How compatible would the structure set up in OPM to review cases be with those already in agencies doing the same work?
- Do agencies' central offices review proposed appealable actions?
- What is the earliest point at which agencies become aware of problems arising in a case?
- Who has authority in the agency to request reopening? Is it at the field level? Do central offices review decisions? If so, how quickly?
- With whom should OPM be dealing in the agencies? There will be only one channel for agency contact in OPM.

A great many of the same issues will be going to the Board and to negotiated grievance/arbitration. Different procedures have been set up for OPM intervention in FLRA cases. Will agencies be handling labor relations and appeals in one office?

Finally, Mrs. Barber spoke of digests of MSPB decisions, not only digests like those currently prepared by FEAA, but possible ones made by OPM with commentary on MSPB decisions and on court cases. She asked for comments to be sent to her in Room 3508, in the Office of Personnel Management.

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Draft Part 771, Agency grievance system

Mrs. Lehman pointed out to those present that they had two drafts which had different approaches to amending Part 771-- one by Elsie Fischer and the other by Seymour Alloy of the Adverse Action Committee.

Ms. Fischer said her main aims were to deregulate and to deal especially with problem areas of which Commission staff had become aware. The administrative grievance system would apply to every issue outside the appellate system, and could cover applicants for employment and some actions now excluded. While each agency would be required to have an informal procedure, its use would no longer be mandatory in every grievance. The 90-day time limit would begin only when a grievance was accepted under the formal system. Finally, there would no longer be a requirement for a grievance examiner, rather an inquiry by the deciding official, or someone he or she names.

Mr. Alloy said his approach reflected the authority of the agency head to run its program with a minimum number of regulatory constraints. His proposal would allow the agency head to extend the grievance procedures to many issues not now covered, and would leave the design of the system to agencies. He would give the agency head the choice of whether to include under the agency grievance procedures issues which have been excluded from coverage of a negotiated grievance procedure by agreement of the parties. He would eliminate mandatory use of the informal stage, but would require a grievance examiner if a grievance is not resolved earlier. The agency head would have the authority to cover appealable actions for nonbargaining unit employees.

Some of the points in the discussion of the two approaches:

- A member would delete coverage of allegations of unfair labor practices made in connection with a matter which was being grieved.
- It should be made clear in any final draft that the informal grievance process was not required.
- Several of those present disagreed with the proposal to allow agency heads to exclude from the administrative grievance system matters excluded by agreement of the parties from the negotiated grievance procedures. They felt that bargaining unit employees should have some way of grieving when the negotiated grievance procedure does not cover an issue. Others said that since nothing in the law requires an administrative grievance procedure,

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agency heads should be able to determine what the agency system will cover. New regulations should drop any paternalistic approach and allow them to do so.

Mrs. Lehman asked whether members thought regulations were needed at all. Some members thought there should be a requirement for an agency grievance system, but with far fewer OPM requirements for the form the system would take. A few felt that OPM need not regulate, since most agencies realize there is a need for an administrative process within the agency to handle employee dissatisfaction. OPM, as part of its evaluation function, could look at agency systems to see if they served this purpose.

Mrs. Lehman asked for handwritten comments or phone calls with further opinions on the need for a Part 771 and the form it should take. Any comments should be made before January 11, if possible.